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Wednesday, 14 June 2006, 3 p.m.

New York

President:	Ms. Løj	(Denmark)
Members:	Argentina	Mr. García Moritán
	China	Mr. Guan Jian
	Congo	Mr. Gayama
	France	Mr. De La Sablière
	Ghana	Nana Effah-Apenteng
	Greece	Mrs. Telalian
	Japan	Mr. Kitaoka
	Peru	Ms. Zanelli
	Qatar	Mr. Al-Nasser
	Russian Federation	Mr. Kuzmin
	Slovakia	Mr. Burian
	United Kingdom of Great Britain and Northern Ireland	Ms. Pierce
	United Republic of Tanzania	Mr. Mahiga
	United States of America	Mr. Olson

Agenda

Reports of the Secretary-General on the Sudan

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06-38720 (E)

The meeting was called to order at 3.05 p.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President: I should like to inform the Council that I have received a letter from the representative of the Sudan in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Manis (Sudan) took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Luis Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, to whom I give the floor.

Mr. Moreno-Ocampo: I welcome this opportunity to update the Council on the activities undertaken by my Office since my last report in December.

In adopting resolution 1593 (2005), the Council affirmed that justice and accountability are critical to achieving lasting peace and security in Darfur. This position is reinforced in resolution 1674 (2006), which concludes that the prevention of armed conflict requires a comprehensive approach and that ending impunity, through appropriate national and international mechanisms, is essential to ensuring the non-recurrence of abuses.

My Office is committed to contributing to this comprehensive approach by investigating and prosecuting crimes within the jurisdiction of the International Criminal Court (ICC). My Office will, in due course, select those to be prosecuted on the basis of the evidence collected and will present its conclusions to the judges. The judges will make the final decision as to who will be tried by our Court. In accordance with our rules and policies, we will make such a presentation only when we have gathered comprehensive and solid evidence of individual responsibility for crimes committed in Darfur and thoroughly analysed the admissibility of our cases. That will guarantee both fair and expeditious trials.

Given the scale of the alleged crimes committed in Darfur and the complexities associated with the identification of those individuals bearing greatest responsibility for the crimes, my Office currently anticipates the investigation and prosecution of a sequence of cases, rather than a single case dealing with the situation in Darfur as a whole.

The gravity of the crimes is central to the process of case selection. My Office looks at factors such as the scale and nature of the crimes, as well as the impact of ICC investigations and prosecutions in the prevention of further crimes. In the context of Darfur, particular attention will be given to investigating crimes currently affecting the lives and safety of the 2 million displaced civilians in the region, in an effort to improve conditions for humanitarian assistance and to protect victims from further attack. The Office needs to gather sufficient information on these crimes to meet the evidential standards in the Statute.

My Office is collecting all available information from outside Darfur and has managed to make progress in its work despite serious obstacles. I wish to emphasize, however, that we are now entering a new phase in which unconditional cooperation will be essential to expeditiously complete the investigation and identify those most responsible for crimes

committed in Darfur. Our speed will depend on the cooperation received.

The full cooperation of the Government of the Sudan and other parties to the conflict is, of course, vital. Furthermore, the cooperation of those organizations with a significant presence on the ground, such as the African Union and the United Nations, is and will continue to be essential.

My previous reports to the Council have highlighted the slow progress of cooperation between the African Union Mission in the Sudan (AMIS) and my Office. Since December 2005, we have engaged on a number of occasions with AMIS and the African Union, seeking to expedite cooperation. I have also offered to brief the Peace and Security Council of the African Union on our activities and on the importance of reinforcing mutual efforts to ensure justice and accountability. Representatives of my Office have also met with AMIS in Khartoum and have delivered a detailed request for information relevant to the investigation.

I welcome the recent statement of the Peace and Security Council of 10 March 2006, supporting cooperation between the African Union and the Court in Darfur. I have also received confirmations in writing from both Ambassador Konare and Ambassador Kingibe of the commitment of the African Union to cooperate fully with the ICC and of the Union's determination to assist in the fight against impunity. In addition, I have been invited to brief the African Union Peace and Security Council in the near future on progress in the context of resolution 1593 (2005). Those are signals that cooperation will now be forthcoming. It is important to reiterate that the assistance of the African Union remains a component fundamental to progress in key aspects of the investigation.

In December 2005, the Office of the Prosecutor reported to the Security Council on a series of cooperation requests that had been made to the Government of the Sudan. These included a request to visit the Sudan to assess national proceedings relating to Darfur and a request to conduct several interviews of officials identified by my Office. Those officials, owing to their positions, functions and experience, could provide insights into the events in Darfur, the activities of all parties to the conflict and the manner in which the Government of the Sudan sought to address the situation.

Pursuant to the first request, a delegation of the Prosecutor's Office, with the objective of assessing national proceedings, visited the Sudan in February 2006 for an extensive programme of meetings with judges, prosecutors and representatives of the police force and other Government departments. The Government of the Sudan cooperated with the Office in allowing access to the requested officials in meetings that were formally video recorded. In addition to the interviews of officials requested by the Office, the Government facilitated meetings with the Governor of South Darfur and with representatives of the Commission demarcating nomadic routes, offering further information on the situation in Darfur.

During this mission and throughout this reporting period, the Office has gathered significant amounts of information to determine whether the Government of the Sudan has dealt with, or is dealing with, the cases that my Office is likely to select for prosecution. The Government of the Sudan has also provided significant amounts of information relating to the conduct of traditional tribal reconciliation mechanisms in Darfur. These are not criminal proceedings as such for the purpose of assessing the admissibility of cases before the International Criminal Court, but they are an important part of the fabric of reconciliation for Darfur, as recognized in resolution 1593 (2005).

In previous reports, the Office of the Prosecutor has highlighted the fact that the admissibility assessment is a case-specific assessment, not a judgement on the Sudan justice system as a whole. Once I identify cases for prosecution, I must determine whether or not the national authorities are conducting or have conducted national proceedings genuinely in relation to those cases.

It is clear that the national authorities face significant challenges to the conduct of effective criminal proceedings in Darfur. The special courts appear to remain relatively inaccessible, with judges performing other duties in Khartoum, awaiting the start of trials in Darfur. Limited resources and specialized expertise, with reliance on existing infrastructure for investigations, are also hampering progress. Some efforts have been made by the Government of the Sudan to rectify those deficiencies, but these efforts

have also reportedly been restricted by the lack of security on the ground.

Many of the investigation mechanisms are reactive to complaints, but there is a reluctance or an inability on the part of witnesses and victims to come forward with complaints, and in some cases there are allegations of intimidation and harassment of complainants. That is particularly prevalent in the context of rape allegations. The lack of any system for the protection of witnesses is also a strong disincentive for complainants and presents a serious obstacle to the conduct of any effective national criminal proceedings.

On the basis of our current assessment, it does not appear that the national authorities have investigated or prosecuted — or are investigating and prosecuting — cases that are or will be the focus of our attention, in such a way as to render those cases inadmissible before the ICC. We reinforce the point, made in previous reports, that this assessment is ongoing and that a final determination will be made when specific cases are selected for prosecution. That will require the continued cooperation of the Government of the Sudan in providing access to proceedings, officials and institutions, including in Darfur.

With respect to the request to conduct other interviews related to activities undertaken in Darfur, I reported in December that we had agreed with the Sudanese authorities that, in preparation of the interviews, the Ministry of Defence would cooperate in establishing and submitting in advance a comprehensive report on matters specified by my Office.

At the start of May 2006, the Government of the Sudan submitted a written report responding to questions from my Office. This report provides information on the various phases of the conflict from the Government's perspective, on matters relating to the military and security structures operating in Darfur, the activities of other parties to the conflict and the legal system governing the conduct of military operations. The written report was supplemented by an oral exchange in a meeting between representatives of my Office and military officers in Khartoum last week.

The requested interviews that were to follow up on the report had not yet taken place. However, the Government of the Sudan has recently agreed that they can start in August 2006. These interviews are extremely important in order to establish a comprehensive and complete account of events in Darfur since July 2002. In accordance with the Rome Statute, we are obliged to investigate not only incriminating but also exonerating circumstances. Because my Office is conducting its investigation from outside the Sudan, access to all parties in the conflict will be extremely important to allow us to fully test and corroborate the numerous accounts and allegations of crimes.

In addition to the moral duty, my Office is under a legal obligation to protect victims and witnesses. The absence of a functioning and sustainable system for their protection continues to prohibit an effective investigation inside Darfur. The investigative activities of the Office therefore continued in several countries outside Darfur, including Chad, until April 2006, when they were suspended as a result of clashes between Government and rebel forces. Operations are expected to resume soon.

The Office has already gathered significant amounts of information and evidence on crimes committed in Darfur. The International Criminal Court has jurisdiction over crimes against humanity, war crimes and genocide. Various allegations have been made that some of the groups involved in the commission of crimes in Darfur did so with specific genocidal intent. This issue remains the subject of investigation. I have not, and I will not, draw any conclusions as to the character of the crimes pending the completion of a full and impartial investigation.

Identifying those persons with the greatest responsibility for the most serious crimes in Darfur is a key challenge for the investigation. The complexity of the conflict in Darfur exacerbates this challenge, given that it involves multiple parties and varies over time and across different states and localities. As stated in previous reports, the list of 51 names provided by the International Commission of Inquiry for Darfur is, of course, not binding on my Office, and I will keep this list confidential.

My Office has also noted the developments in the work of the United Nations sanctions committee and the listing of individuals for the purpose of sanctions. This list is in no way connected to the process of identification of individuals for possible prosecution by the ICC. It is important to reinforce the fact that the

mandate and activities of the sanctions committee and the ICC are distinct.

My Office will not present evidence or identify suspects to the media or other institutions. We are an independent body bound by the Rome Statute and by rules of due process, including specific evidentiary standards. The best contribution of the ICC to a meaningful and lasting solution in Darfur will be to fulfil its judicial mandate in accordance with those rules and standards.

My Office will, in due course, identify those to be prosecuted on the basis of the evidence collected and present its conclusions to the judges.

The ICC is a complementary international mechanism for the delivery of justice for the most serious international crimes. The concern of the ICC is to see that effective justice is delivered to the victims of the crimes in Darfur. That can be achieved either at the national level where the domestic authorities are genuinely willing and able to prosecute those most responsible for the most serious crimes, or by the ICC, or by both. In the coming phase, the Office will seek to complete the investigation of the first case and will continue to assess, on an ongoing basis, the admissibility of selected cases.

I have stressed throughout this presentation the need for cooperation in order to ensure accountability, not only for past but also for present crimes within the jurisdiction of the Court that continue to affect the displaced population in Darfur. Our justice effort should contribute to their protection and to the prevention of further crimes. We need more information on groups that continue to attack the displaced population or to impede the latter's access to humanitarian assistance.

We turn to this Council to assist us in obtaining this and other types of cooperation essential to implementing resolution 1593 (2005).

The President: I now give the floor to the representative of the Sudan.

Mr. Manis (The Sudan) (*spoke in Arabic*): Madam President, I am pleased to address you today. The Security Council mission has returned from a very important, significant and historic visit to my country, which allowed the Council the opportunity to understand the reality of the situation in the field in Darfur and in the Sudan in general. The mission has clearly understood the root causes of the crisis and its internal and external aspects, particularly since this visit has come after the signing of the Darfur peace agreement, which the Council well knows was reached on 5 May, after a difficult period.

As we listen today to the report of the Prosecutor of the International Criminal Court (ICC), which reflects very important aspects of the cooperation that is established with the Government of the Sudan, we have to affirm that the Sudan has viewed all the relevant Security Council resolutions on the crisis in Darfur as issued by the United Nations, of which we are a committed and active Member. On the basis of this principle, our commitment is to cooperate fully in accordance with requirements of these resolutions.

With regard to today's meeting, we should point out that the Sudanese Government responded positively to resolution 1593 (2005) and has begun the process of consulting with the Prosecutor and his assistants, including through visits by them to the Sudan. We believe that that communication and cooperation has had a number of positive results, some of which we would like to highlight.

The Prosecutor quickly came to an understanding of the situation. He was briefed on the history of the Sudanese judiciary, its independence and its capacity, along with related judicial organs, with regard to establishing the rule of law. The Prosecutor has understood the reasons for the deterioration of the situation in Darfur and the security vacuum which led to attacks on police stations and the ensuing events, including tribal confrontations and conflict among political factions and elements, which led to an escalation of the situation and the consequent widespread violations, of which everyone is aware.

Our police and prosecutors are prosecuting the perpetrators of those crimes. The Prosecutor learned about a great many cases that have been decided and about charges and allegations that have been followed up since a special prosecutor was appointed to look into those cases in Darfur. Special courts have been established and have handed down many criminal sentences, including execution and life imprisonment. The Prosecutor also had the opportunity to better understand how best to deal with security and tribal problems and disputes.

As it continued its cooperation with the Prosecutor, the Government gave him the opportunity

to put questions to the armed forces. Those questions were answered, and a delegation from the Office of the Prosecutor recently visited the Sudan seeking further details concerning the responses provided by the Sudanese Armed Forces. During their visits to the Sudan, the Prosecutor's delegation had an opportunity to meet representatives of 13 judicial and investigative mechanisms, including prosecutors and judges dealing with events in Darfur, among them judges entrusted by the Government with following up cases to assess losses resulting from the events, which harmed tens of thousands of citizens, and the measures taken by the Government with a view to providing compensation.

The Prosecutor has received testimony from the National Investigation Commission and has reviewed its recommendations. He has learned about the measures taken by the Ministry of Justice and the Ministry of the Interior in prosecuting those accused of the events in Darfur. There have been meetings with many officials from provinces in Darfur with a view to understanding the general situation and to seeking their views on how to prosecute the accused, and on how to establish the rule of law and mend the social fabric.

There is no doubt that a political settlement is the best possible solution and is the key to achieving stability, justice and peace in Darfur. With the signing of the Darfur Peace Agreement, which was sponsored by the African Union and to which the United Nations, including the Security Council, the European Union and many other partners contributed, we now have a bridge to security and stability. However, as the Council knows, the Peace Agreement faces many and various challenges, the most significant of which is the fact that some armed groups are outside the framework of the Agreement. In addition, some people in Darfur have doubts about the Agreement — a matter that requires encouragement, confidence-building and reconciliation measures among the various elements of society in Darfur.

The Darfur Peace Agreement deals in detail with all of the elements of the question of Darfur. The parties that have signed the Agreement are trying to implement their commitments. That endeavour will not be successful unless it is accompanied by efforts at the grass-roots level, which is characterized by extreme tribal intolerance. These could include activating traditional dispute- and conflict-settlement mechanisms and bringing about reconciliation — an approach that has been taken many times in the history of Darfur and a traditional custom in Africa in general and in Darfur in particular.

Mending the social fabric through efforts aimed at reconciliation, amnesty and the satisfactory resolution of problems among the various Darfur tribes is necessary and of fundamental importance if peace is to be established in Darfur. That is an effort that we hope will enjoy the support and encouragement of the African Union and the international community, including the Security Council, in keeping with paragraph 5 of resolution 1593 (2005).

The Government of the Sudan will continue its efforts to establish the rule of law and justice through the courts and other mechanisms set up in Darfur, to put an end to impunity and to hold accountable all those convicted of violations of human rights and international humanitarian law. Moreover, we now have a new agreement which requires wise stewardship and proper implementation so as to ensure that peace can become a concrete reality among the tribes. That will require a balanced approach aimed at achieving the rule of law and establishing peace so that justice will be merged with amnesty and forgiveness and so that peace and coexistence will arise spontaneously and easily among the tribes, which will move beyond the bitterness of the past. Providing an opportunity for social traditions, values and customs is an important element during this phase, because peace and stability must come about as a result of the people's will before there can be an agreement on paper.

We therefore believe that the current political, security and social conditions in Darfur call for the Security Council's support for efforts towards an internal dialogue in Darfur with a view to achieving peaceful coexistence. That, in line with all that I have said, is the easiest way to establish the rule of law and lasting peace.

The President: In accordance with the understanding reached in the Council's prior consultations, I now invite Council members to a private meeting following the adjournment of this meeting.

The meeting rose at 3.40 p.m.